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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Lassen)

RICKY TYRONE FOSTER,

Plaintiff and Appellant,

v.

SHANNON R. MOSS,

Defendant and Respondent.

C086594

(Super. Ct. No. 60693)

Ricky Tyrone Foster was incarcerated at High Desert State Prison and filed a lawsuit (the first action) against a prison official. The trial court dismissed the case and Foster did not appeal from the judgment of dismissal. Instead, Foster filed a different lawsuit (the second action) against Shannon Moss, the Clerk of the Lassen County Superior Court, alleging that she improperly refused to file some of his documents in the first action.

The trial court sustained Moss's demurrer without leave to amend, ruling, among other things, that there was no legally cognizable cause of action, Foster failed to comply with government claims requirements, and amendment would be futile given Moss's immunity.

Foster's primary heading in his appellant's opening brief reads as follows: "A paper is filed of record in contemplation of law when it is delivered to the proper official with the intention that it should become a part of the official record and the filing thus made is not impaired by the clerk's failure or refusal without good cause to receive and record the same as filed in the record of his office." Because Foster has not established reversible error, we will affirm the judgment.

BACKGROUND

In September 2015, Foster filed the first action against an official at the prison where he was incarcerated. Moss rejected several documents Foster attempted to file in the case; notices of return were served on Foster with instructions on how to properly file documents or set court hearings.

Moss subsequently notified Foster that an order to show cause hearing was set for July 2016 based on his failure to comply with the court's Delay Reduction Rules. A second order to show cause hearing was set in September 2016. Foster was notified that failure to respond would result in dismissal of the action. Foster failed to respond and the trial court dismissed the first action.

Three months later, Foster filed the second action, asserting three causes of action against Moss for negligence, intentional tort, and "obstruction of access to court." Foster blamed Moss for the dismissal in the first action, claiming she failed to file motions and papers he sent to the trial court in that case. He also generally alleged Moss was biased against him and that she violated his constitutional right of access to the court. Foster sought monetary damages.

Moss demurred to the complaint and Foster did not oppose the demurrer or appear at the noticed hearing. The trial court sustained the demurrer without leave to amend. But Foster filed a subsequent request that the trial court construed as seeking relief based on mistake or excusable neglect pursuant to Code of Civil Procedure section 473. The trial court set aside the order sustaining the demurrer without leave to amend and allowed Foster to oppose the demurrer. After considering the arguments of the parties, the trial court sustained the demurrer without leave to amend and entered judgment.

Foster asserts that the record on appeal is incomplete, focusing on a “Notice of Returns” and his request for default in the first action. He claims Moss’s close friends omitted the documents from the record. But it appears those documents are included in the record.

DISCUSSION

An order sustaining a demurrer without leave to amend is reviewed de novo; on appeal, we apply the well-settled rules testing the sufficiency of a complaint against a general demurrer. (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010.) We give the complaint a reasonable interpretation, reading it as a whole and its parts in context. (*Ibid.*) “ ‘ “ ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.’ ” ’ ” (*Ibid.*) When a trial court sustains a demurrer, we determine whether the complaint states facts sufficient to constitute a cause of action. (*Ibid.*) And when a demurrer is sustained without leave to amend, we decide whether there is a reasonable possibility that the plaintiff can amend the complaint to cure the defect. (*Ibid.*) “ ‘ “The burden of proving such reasonable possibility is squarely on the plaintiff.” ’ ” (*Ibid.*)

In this case, Foster’s complaint alleged acts or omissions by Moss in the course of carrying out her judicial functions as Clerk of the Lassen County Superior Court. He

contends she improperly refused to file documents in the first action, which resulted in a judgment of dismissal in that case.

But Foster cannot use the present appeal to challenge the judgment of dismissal in the first action, even if the trial court dismissed the action in error. Most judicial mistakes or wrongs are subject to correction through mechanisms of review which do not subject court officers or employees to personal liability. (*Forrester v. White* (1988) 484 U.S. 219, 227 [98 L.Ed.2d 555, 565], superseded by statute on another ground in *Leclerc v. Webb* (2003) 270 F.Supp.2d 779, 792-793.) A judgment of dismissal is an appealable order. (Code Civ. Proc., § 904.1, subd. (a)(1).) It appears that, at the latest, Foster had 180 days to appeal the judgment of dismissal in the first action, which was entered on September 8, 2016. (Cal. Rules of Court, rule 8.104(a).) Nothing in the record shows he appealed the judgment of dismissal, and thus he is now barred from challenging the underlying dismissal order in the first action.

Moreover, as the trial court concluded, Foster's causes of action for negligence and intentional tort are also barred because he failed to comply with the claims presentation requirements of the Government Claims Act. (*State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239 [failure to comply with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action].) The requirement applies to suits against judicial branch employees for their alleged acts or omissions within the scope of their employment. (Gov. Code, § 950.2; *Neal v. Gatlin* (1973) 35 Cal.App.3d 871, 877-878 [where a public employee was acting within the employee's express or implied authority, notwithstanding the wrongful nature of the act, a complaint based on such act was properly dismissed for failure to allege filing of a claim with the employing public entity].)

Foster sued an employee of the superior court for damages based on negligence and intentional tort theories. He was therefore required to timely present a proper claim to the appropriate judicial branch entity -- the Superior Court of California, County of

Lassen -- by delivering or mailing the claim to the court's executive officer. (Gov. Code, § 915, subd. (c)(1).)

Foster's complaint concedes he is subject to this claim presentation requirement, and he admits he filed claims with the wrong entities. Foster submitted claims to the California Government Claims Program and the County of Lassen Board of Supervisors. Both informed Foster that he had submitted claims to the wrong entities and told him the proper procedure to present a claim against a judicial branch entity in accordance with Government Code section 915, subdivision (c)(1). Nevertheless, Foster failed to present a proper claim as required by law. (*DiCampi-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 987 [requiring strict compliance with statutory requirements for delivery of a claim under section 915, and rejecting the notion that a claim could be accepted if it "substantially complied" with such requirements].)

To the extent Foster's complaint alleges that his purported causes of action accrued sometime between September 14, 2015, when he filed his complaint in the first action, and September 8, 2016, when the court entered a judgment of dismissal in the first action, the deadline to submit a claim has expired. (Gov. Code, § 911.2, subd. (a) ["A claim relating to . . . injury to person or to personal property . . . shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) not later than one year after the accrual of the cause of action"].) Foster, therefore, cannot cure this defect. His failure to comply with the claims presentation requirement under the Government Claims Act is fatal.

Foster argues for the first time in his reply brief that the hearing on the demurrer violated his due process and equal protection rights because the judge purportedly refused to allow him to be heard at the hearing since the phone connection to the jail was allegedly inadequate. Arguments raised for the first time in the reply brief are untimely

and may be disregarded. (*WorldMark, The Club v. Wyndham Resort Development Corp.* (2010) 187 Cal.App.4th 1017, 1030, fn. 7.)

DISPOSITION

The judgment is affirmed.

MAURO, J.

We concur:

/S/
RAYE, P. J.

/S/
RENNER, J.